

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SHIRLEY DEROUIN and KENNETH  
DEROUIN, husband and wife, and the marital  
community composed thereof,

Plaintiffs,

v.

KENNETH L. KELLAR TRUCK LINE,  
INC, a Washington Corporation, and DION  
WILLIAM TORRIES and JANE DOE  
TORRES, husband and wife, and the marital  
community thereof,

Defendants.

Case No. C08-1049-JCC

ORDER

This matter comes before the Court on Defendants' objection to Plaintiffs' attempt to admit evidence of Defendants' subsequent remedial measure, namely, Defendants' later decision to allow messengers to stand outside the armored truck to assist with reversing the vehicle. The Court sustained the objection. Plaintiffs' filed their opposition (Dkt. No. 91), and Defendants similarly filed their position (Dkt. No. 92). Having thoroughly considered the parties' positions and the relevant record, the Court maintains sustaining Defendant's objection.

Federal Rule of Evidence 407 generally provides that evidence of a subsequent

1 remedial measure is inadmissible to prove negligence. Rule 407 includes an exception,  
2 however, when the evidence is offered to prove “feasibility of precautionary measures, if  
3 controverted.” Plaintiffs contend that Defendants have placed feasibility in issue by alluding to  
4 a company policy that precluded truck messengers from exiting the truck to assist in its  
5 maneuvering. (Dkt. No. 91 at 2). Defendants have not placed in issue the feasibility of such  
6 conduct. *See Gauthier v. AMF, Inc.*, 788 F.2d 634, 638 (9th Cir. 1986) (“[W]here a defendant  
7 argues about the trade-offs involved in taking precautionary measures, it is not placing  
8 *feasibility* in issue.”); 1 Michael H. Graham, Handbook of Federal Evidence § 407:1 (6th ed.  
9 2010). Moreover, the Court excludes the evidence under Rule 403, finding that the probative  
10 value, if any, is substantially outweighed by the danger of unfair prejudice and that admission  
11 may mislead the jury. *See* Fed. R. Evid. 407 advisory committee’s note.

12 DATED this 4th day of November, 2010.

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A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE